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Special Counsel for Chapter 7 Trustee
5 KARL T. ANDERSON
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7 UNITED STATES BANKRUPTCY COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 RIVERSIDE DIVISION

10 In re:

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12 JOSEPH W. STEPHENSON)
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Debtor.

Case No.: RS 03-14187 PC

CHAPTER 7

NOTICE OF MOTION FOR
ORDER AUTHORIZING CHAPTER 7
TRUSTEE TO

(1) SELL PROPERTY OF THE
ESTATE FREE AND CLEAR OF
LIENS AND INTEREST TO
SUZANNE ARMSTRONG OR TO
THE HIGHEST BIDDER; AND

(2) TO PAY REALTOR THROUGH
ESCROW

(74050 Scholar Lane, Palm Desert, CA)

Date: September 20, 2004
Time: 9:00 a.m.
Ctrm: 303

PLEASE TAKE NOTICE that on September 20, 2004 at 9:00 a.m. in courtroom 303 of the
United States Bankruptcy Court located at the 3420 Twelfth Street, Riverside, California, a hearing
will be held on the Chapter 7 Trustee's Motion For Order Authorizing Trustee to Sell Property of the
Estate Free and Clear of Liens and Interest and to Pay Realtor Through Escrow.

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1 This Motion (the "Motion") will be based on this Motion, the supporting Declaration of
2 Karl T. Anderson, the pleadings and records on file herein, and any evidence properly before the
3 Court and the arguments of counsel.

4 Pursuant to Local Bankruptcy Rule 9013-1(a)(7) each party wishing to oppose the motion
5 shall, not later than 14 days prior to the hearing date, serve upon Counsel for Chapter 7 Trustee
6 and the U.S. Trustee's Office and file with the Clerk of the Bankruptcy Court a brief but
7 complete written statement of all reasons in opposition thereto, and answering memorandum of
8 points and authorities, declarations and copies of all photographs and documentary evidence on
9 which the responding party intends to rely.

10 The Motion is available for review during regular business hours at the Clerk of the Bankruptcy
11 Court, located at 3420 Twelfth Street, Riverside, California, or a copy thereof may be obtained upon
12 written request from Annie Verdries at Lewis Brisbois Bisgaard & Smith LLP, 650 Town Center Drive,
13 Suite 1400, Costa Mesa, California 92626, special counsel for Chapter 7 Trustee.

14 The trustee has so far received three offers.

- 15 1. Marguerite Goosen and Derek W. Hogaboam have offered to purchase the
16 property for \$572,000.
- 17 2. Suzanne Armstrong has offered to purchase the property for \$599,000.00
- 18 3. Raquel Davalos has offered to purchase the property for \$585,000.00

19 Trustee requests permission to consummate the sale to the highest bidder.

20 The estate's interest in the property is being sold as is and where is without any guaranty or
21 warranty, free and clear of liens and interests.

22 This transaction has been negotiated and consummated in good faith and on an arms length
23 basis. It confers no special treatment on any of Debtors' insiders.

24 Notice of this Motion to Sell has also been served on all creditors of the Debtors including those
25 creditors who claim an interest in the property.

26 **Payment of Liens, Encumbrances, Costs and Fees**

27 As shown by the preliminary title report, the property is encumbered as follows:

- 28 1. Real property taxes of approximately \$9,000 plus interest and penalties.

2. A Deed of Trust in favor of World Savings Bank FSB, with an approximate balance of \$ 306,000.

Trustee intends to pay these obligations through escrow.

Trustee further seeks permission to pay through escrow seller's ordinary and customary escrow fees, title changes and other incidental customary costs and fees.

Trustee further seeks permission to pay through escrow seller's realtors a total commission of 5% of the sales price. Each of seller's realtors will receive a portion of this commission pursuant to a formula set forth in the application to employ said realtors by the Trustee. A portion of this commission may have to be paid by seller's realtors to the realtor of the purchaser, as is the custom in the industry.

Overbidders Are Welcome at the Hearing to Approve the Sale

As always, other potential purchasers may submit overbids at or before the hearing to approve the sale. Accordingly, the Trustee requests that the court adopt certain overbid procedures.

Any party wishing to submit an overbid should appear at the hearing on this motion on September 20, 2004 at 9:00 a.m. in courtroom 303 before the Honorable Peter H. Carroll. At least three days prior to the hearing, each potential overbidder should contact Jeff Litton or counsel for the Trustee to tender a deposit in the amount of \$10,000 and provide the Trustee with proof of a loan commitment or an independent ability to pay at least an additional \$594,000.

Jeff Litton may be contacted at Realty Executives Prestige Properties, 285 North Palm Canyon Drive, #545, Palm Desert, California 92262. Tel: (760) 327-3629; Fax: (760) 778-1482; E-Mail: jefflitton@aol.com.

The first overbid for the Property should be for at least \$5,000 over \$599,000 and subsequent overbids should be in increments of at least \$1,000. Finally, the overbidder must agree (and so state on the record) to execute a purchase agreement in a form satisfactory to the Trustee.

The Property Should Be Sold Free and Clear Of All Liens and Interests

The Trustee requests that the Court authorize the sale of the Property free and clear of any liens and interests of the Debtor and his son Mark Stephenson. The Trustee has obtained a preliminary title report which confirms that title to the Property is in the name of Debtor and his son, Mark.

1 Mark has consented to the sale, with his interest, if any, to attach to the proceeds to the extent
2 of its validity and in order of its priority. All Deeds of Trust and real property taxes will be paid
3 through escrow.

4 **The Court Should Approve the Compensation of Jeff Litton and Richard Halderman, Jr.**

5 The Trustee further requests that the court approve the compensation of his real estate brokers,
6 Jeff Litton and Richard Halderman, Jr. On or about August 4, 2004, Trustee submitted an application
7 to employ real estate brokers, which was approved by this court on August 23, 2004. Pursuant to the
8 employment application the brokers are entitled to a total commission of 5% of the gross sales price,
9 pursuant to a formula set forth therein.

10 The brokers have spent considerable time marketing the Property over several months. They
11 have obtained three offers for the Property and performed their primary obligations as real estate
12 brokers in this case. See Declaration of Jeff Litton. Accordingly, the commission is well-deserved and
13 the Trustee requests authorization to pay the commission.

14 **The Court Should Waive the Provisions of Rule 6004 (g) and Authorize an Immediate Sale**

15 Finally, the Trustee requests that the court waive the ten day stay imposed by Rule 6004 (g)
16 of the Federal Rules of Bankruptcy Procedure. The parties wish to complete the sale as quickly as
17 possible and, therefore, the Trustee requests permission to proceed immediately with the sale.

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19 DATED: August 27, 2004

LEWIS BRISBOIS BISGAARD & SMITH LLP

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22 By 

23 Annie Verdries
24 Special Counsel for Karl T. Anderson
25 Chapter 7 Trustee
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